IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.922 of 1992
Date of decision: November 08, 2006.

Bhajan Singh & Ors.

...**Appellants**

v.

Harka Ram & Ors.

...**Respondent(s)**

Present: Shri Raj Kumar Gupta, Advocate for the appellants

Shri Rameshwar Malik, Advocate for respondents No.3 to 5.

Surya Kant, J. (Oral)

This appeal is preferred by the claimants whose claim petition under section 166 of the Motor Vehicles Act, 1988 has been partly allowed by the Motor Accident Claims Tribunal (for short the Tribunal), Jind vide its award under appeal, dated April 1, 1992.

Briefly, the facts may be noticed.

On 11.10.1991, Dalbir Singh, aged about 22 years, boarded a four-wheeler No. HYJ-6759 at his village Dadrath for going to Panipat. He was member of a *Jagrata* party and other members of the said party along with their respective items too boarded the four-wheeler as they were to perform *jagrata* at Panipat. When the four-wheeler had hardly gone 3-4 kms from Safidon on Jind-Safidon road, a tractor bearing No. HRV-1559 driven by Basau Ram (respondent No.2) came from the opposite direction in a highly rash and negligent manner and struck against the four-wheeler as a

result of which the driver of the four-wheeler lost his balance and the four-wheeler turned turtle after going into the pits by the side of the road. Dalbir Singh and other passengers of the four-wheeler suffered injuries. Dalbir Singh was rushed to Civil Hospital, Safidon where he succumbed to the injuries on the next day. Alleging that the accident was caused due to sheer negligence and high speeed driving by the tractor driver, this claim petition was filed by the parents, two sisters and one brother of deceased Dalbir Singh.

The owner, namely Harka Ram – respondent No.1, of the tractor HRV-1559 did not appear despite service and was, thus, proceeded exparte. The driver of the tractor (Basau Ram), however, appeared and filed his written statement. He denied that any accident was caused by him. He also denied that the said tractor was being driven by him at the time when the alleged accident took place.

Respondents No.3, 4 and 5, namely, the previous and present owners of the four-wheeler and its driver filed a joint written statement. In para 24 of the written statement, they took up the following stand:-

> "*24. That para No.24 of the petition as described is not totally correct. In fact the four-wheeler was booked for carrying goods required for Jagrata which includes several glass items and breakable goods. The persons named in this para boarded the vehicle for holding the goods in the four-wheeler so that they may not break during transit. The factum of accident and negligent and rash driving by the driver of the tractor is correct.*"

The Oriental Insurance Co. Ltd., with whom incidentally the tractor

as well as the four-wheeler, both were insured, also contested the claim petition. As regard to the tractor, it took up the plea that the same was being driven by a person not having a valid driving licence, therefore, no liability could be fastened upon it. In respect of the four-wheeler, the insurance company took the plea that since the said vehicle was being used other than the purpose for which it was insured, therefore, it was not liable to pay towards compensation liability, if any.

On the basis of the pleadings, the Tribunal framed the following issues:-

1. Whether the accident was caused due to rash or negligent driving on the part of the driver of tractor no.HRV-1559? OPP
2. Whether the petitioners are legal representatives of deceased and entitled to any amount of compensation, if so, how much and from whom? OPP
3. Relief.

To prove their case, the claimants-appellants produced Dr. Manjula (PW1) who had conducted the post mortem examination on the dead body of Dalbir Singh, Dr. A.K. Suri, Medical Officer, Civil Hospital, Safidon (PW2) who had conducted medico-legal examination of Dalbir Singh on 11.10.1991, MHC Ramesh Kumar (PW3) who brought the record pertaining to FIR No.342 dated 11.10.1991 under section 279, 337, 338, 427 IPC registered against Basau Ram s/o Amar Singh in the Police Station Safidon, Gaje Singh (PW4) who is Ahalmad in the court of Sub Divisional Judicial Magistrate, Safidon and produced records of the criminal case registered vide the above stated FIR, Bhajan Singh (PW5) – father of the deceased, and Balram (PW6) who was co-passenger of the deceased and a

member of the Jagrata party and who witnessed the accident.

Respondents No.3 to 5 in their evidence tendered copies of the insurance policy (Ex.R1), photostat copy of the route permit (Ex.R2) and a copy of the voucher (Ex.R3) and closed the evidence. On behalf of respondents No.6 and 7, copies of the insurance policy, Ex.R5 and Ex.R6, were produced and they too closed their evidence. Respondent No.2 also tendered a photo copy of cover note of the insurance policy of the tractor (Ex.R4) and closed his evidence. The respondents, however, did not lead any oral evidence.

On appreciation of the above noticed evidence, the learned Tribunal vide its impugned award dated April 1, 1992 has held that the accident was caused due to rash and negligent driving of both the drivers, namely, the tractor and the four-wheeler and, thus, they are jointly liable. The tribunal further held that since 10-11 persons had boarded the four-wheeler, it was being used to carry passengers contrary to the terms and conditions of the insurance policy, therefore, its owner and driver are jointly severely liable to pay the amount of compensation and no liability qua their share could be fastened upon the insurance company. As regard to the owner, driver and insurance company of the tractor, the Tribunal held that the insurance company was liable to pay compensation to the extent of Rs.45,000/-, i.e. 50% of the total amount of compensation awarded by it. While deciding issue No.2, the Tribunal has held that the deceased was earning Rs.1200/- per month; he was unmarried and “32” years old and, thus, the dependency of the claimants-appellants could not be assessed more than Rs.500/- per month. The Tribunal by applying the multiplier of 15 has, thus, awarded a total compensation of Rs.90,000/- out of which a sum of

Rs.20,000/- has been awarded to the minor sister of the deceased (Veena Rani) whereas the remaining sum of Rs.70,000/- has been awarded to the parents of the deceased. One brother and married sister of the deceased have been held not entitled to claim compensation.

I have heard Learned Counsel for the appellants as well as respondents No.3 to 5 and perused the records.

Two-fold contentions have been raised on behalf of the appellants. Firstly, it is agreed that from the pleadings as well as the evidence led by the appellants, it is irresistibly proved that the accident was caused due to rash and negligent driving of the tractor driver only and in that event, the liability to pay the entire amount of compensation ought to have been fastened upon the owner, driver and insurer of the tractor only. It is then argued that the compensation as awarded by the Tribunal is highly inadequate. An ancillary contention that the expenses towards medical treatment, transportation and funeral, etc. also ought to have been awarded to the appellants, has also been raised.

The moot point which requires determination is as to whether or not the driver of the four-wheeler (HYJ-6759) is also responsible for causing the accident in question. In para 24 of their claim petition, the appellants have specifically averred that when the four-wheeler was about 3 kms. on Jind-Safidon road from Safidon side, the delinquent tractor driven by respondent No.2 “came from opposite direction in a rash and high speed and driven in a jig jag manner and in a reckless way and the tractor driver struck his tractor with the driver side of four-wheeler and due to the impact of striking the four-wheeler driver lost its balance and turned turtle after going in the pits by the side of road”. In the claim petition, it is further

averred that, "the tractor driver caused the accident by driving his tractor in a rash and negligent manner....". The tractor driver (Basau Ram) contested the claim petition with a plea of plain denial. He denied that the tractor was involved in the accident and/or it was being driven by him.

There are two material pieces of evidence which have direct bearing on the issue. Firstly, FIR No.342 dated 11.10.1991 (Ex.PC) has been registered on the statement of non-else than the deceased Dalbir Singh. In the aforesaid FIR, he has categorically averred that the tractor driver brought the tractor in a totally rash and negligent manner from the Safidon side and struck it against the four-wheeler near the driver seat due to which the four-wheeler lost its balance and fell into pits. The other material piece of evidence is the statement of eye witness Balram (PW6). He too has categorically deposed that when the four-wheeler was about 2-3 kms. Away from Safidon, the delinquent tractor driven by respondent No.2 came from opposite side and that the tractor driver was driving the tractor in a jig jag manner and in a rash and negligent way and at high speed and the tractor driver struck the four-wheeler on driver side and due to the impact thereof, "the four-wheeler driver lost his balance and the four-wheeler turned turtle after going into pits". Balram (PW6) has been cross-examined. Except one suggestion that the four-wheeler was hired for carrying 10-11 passengers and *Bhawan* of Jagrata, there is not even a remote suggestion to him that the tractor driver was not negligent and/or accident did not take place in the manner he had deposed. No contrary evidence has been led by respondents No.1 and 2 or the Insurance Co.

The driver of the four-wheeler, however, has been held jointly responsible by the Tribunal for causing the accident on the plea that the

four-wheeler had turned turtle obviously for the reason that it was being driven at a high speed. The aforesaid reasoning is neither supported by the evidence on record nor has any rationale. The averments made in the claim petition, the evidence led by the appellants and the implied admission of respondents No.1 and 2, who failed to cross examine the eye witness Balram (PW6) on this count and who also did not lead any evidence contrary to that, are sufficiently enough to hold that while the four-wheeler was going on a State-highway at a normal speed, the tractor suddenly struck it on the driver's side, due to which the driver of the four-wheeler lost control.

The Tribunal's view to the effect that at the time of accident, the four-wheeler was being used to carry passengers contrary to the insurance policy, also appears to be erroneous. Firstly, reference to para 24 of the written statement of respondents No.3 to 5, which has already been reproduced in *extenso,* may be made. There is a categoric plea that the four-wheeler was hired for carrying goods required for *Jagrata* which included several glass items as well as breakable goods and that a few members of the *Jagrata* party too boarded the vehicle so as to hold the goods in the four-wheeler to avoid their breaking during the transit. There is no evidence, whatsoever, on record to prove that any fair was charged from the passengers or that the four-wheeler was not being used for carrying the goods/items of *Jagrata* party. As a matter of fact, Balram (PW6), who was a member of the *Jagrata* party and was travelling along with the deceased, has categorically supported the stand of respondents No.3 to 5 in this regard. The invoice of goods Ex.R3 also fortifies the aforesaid conclusion. The persons, including the deceased, had not boarded the four-

wheeler to take ride as passengers but only to hold breakable *Jagrata* items. It cannot, thus, be said that the owner or driver of the four-wheeler had acted contrary to the terms and conditions of the insurance policy.

So far as the last contention, namely, inadequate award of compensation is concerned, I am of the view that no fault can be found with the monthly income of the deceased as assessed by the Tribunal. There is no documentary evidence on record to suggest that the deceased was earning more than Rs.1200/- per month. The Tribunal, however, has committed a patent factual error in assuming that the deceased was "32 years" of age. This erroneous impression has been created presumably by the statement of Dr. Manjula (PW1) who had conducted post mortem on the dead body of the deceased. She in her deposition has stated that the deceased was "32 years" old. However, from the perusal of post mortem report Ex.PA, as also the medico-legal report, Ex.PB, it is apparent that the deceased was 22 years of age only. Similar is the version of his father Bhajan Singh who appeared as PW5. There is no other evidence on record to suggest that the deceased was more than 22 years of age. Consequently, it is held that the deceased was not more than 22 years of age at the time of accident and at that time his mother was about 40-45 years of age whereas his father was 47-48 years of age as mentioned in the claim petition itself. In this view of the matter, it would have been more appropriate to apply the multiplier of 17 instead of 15 as applied by the learned Tribunal.

Learned counsel for the appellants, however, appears to be justified in contending that the Tribunal ought to have awarded general damages towards medical expenses, transportation and funeral expenses. In my view, both the ends of justice would be appropriately met if a lump-sum

amount of Rs.15,000/- is awarded to the appellants towards the aforesaid general damages/expenses. I order accordingly.

The learned Tribunal, however, has gone erroneous in holding that the deceased, who at the time of his death was unmarried, would have contributed towards his family responsibility @ Rs.500/- per month only. True it is that after his marriage the deceased's own responsibilities would have increased, however, the evidence on record does suggest that he had already started multiple small scale activities as sources of livelihood and it can be safely inferred that with increased responsibilities, his income would have also reasonably increased. Having regard to all the attending circumstances, I am of the considered view that the deceased would have contributed at least 50% of his income to discharge his social and family responsibilities, particularly when he was required to look after his parents, unmarried sister and a other brother who is stated to be handicapped. Accordingly, the dependency of the appellants is assessed to Rs.600/- per month instead of Rs.500/- per month as held by the Tribunal.

For the reasons aforesaid, the impugned award dated April 1, 1992 passed by the learned Tribunal is modified to the extent that the appellants (parents and unmarried sister of the deceased only) are held entitled to compensation of 600x12x17, i.e., Rs.1,22,400/-. In addition, they are also entitled to Rs.15000/- towards general damages/compensation, i.e. total Rs.1,37,400/-. The appellants shall also be entitled to interest @ 7% per annum on the enhanced amount of compensation from the date of filing of the claim petition till actual realization thereof.

In view of the finding that the four-wheeler was not being driver in violation of the Insurance Policy and that the accident was caused

solely due to rash and negligent driving of the tractor driver, it is further held that the Insurance Company along with respondents No.1 and 2 is jointly and severely liable to pay the entire amount of compensation to the appellants.

The appeal is partly allowed. No costs.

November 08, 2006. [**Surya Kant**]
kadyan **Judge**